



# UNITED STATES PATENT AND TRADEMARK OFFICE

*Col*  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,957	04/19/2001	Kent Wendorf	81862.P247	4512
7590	02/07/2006		EXAMINER	
Florin Corie BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP Seventh Floor 12400 Wilshire Boulevard Los Angeles, CA 90025-1026			RYMAN, DANIEL J	
			ART UNIT	PAPER NUMBER
			2665	
DATE MAILED: 02/07/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/839,957	WENDORF ET AL.
	Examiner	Art Unit
	Daniel J. Ryman	2665

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 10 January 2006.  
 2a) This action is FINAL. 2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-32 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-32 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>1/10/06</u>	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 1/10/2006 have been fully considered but they are not persuasive. On pages 10-12 of the Response, with respect to claims 1, 9, 17, and 25, Applicant asserts that Fan fails to disclose "that the timestamp associated with a buffer is variable." Examiner, respectfully, disagrees. Fan teaches that the timestamp associated with the buffer is recalculated each time the buffer becomes active and each time the buffer is serviced (col. 16, lines 5-24). Since the timestamp is recalculated, the timestamp, as broadly defined, is variable.
2. Given the foregoing arguments, Examiner maintains that the claim limitations are anticipated or rendered obvious by the cited prior art.

### ***Information Disclosure Statement***

3. The information disclosure statement filed 1/10/06 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 2, 7-10, 15-18, 23-26, 31, and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Fan et al. (USPN 6,408,005), of record.

6. Regarding claims 1, 17, and 25, Fan discloses a method, system, and software, the method and software comprising the steps of and the system comprising means for: determining a position of a buffer containing a plurality of data units on a time scale based on a Theoretical Departure Time variable buffer parameter (TS) associated with said buffer and a current time counter value (CT) (col. 6, lines 25-34 and col. 15, line 58-col. 16, line 50) where TS is variable since it is recalculated every time a queue becomes active or it is serviced and where the TS is a Theoretical Departure Time since it indicates the time at which the queue should be serviced next; and modifying a signal prompting selection of said buffer for release of at least one data unit of said plurality of data units based on said position on said time scale (priority increased and rate increased when timestamp is less than current time) (col. 15, line 58-col. 16, line 50 and col. 17, lines 25-40).

7. Regarding claims 2, 18, and 26, Fan discloses that said network is an Asynchronous Transfer Mode Network (col. 1, lines 10-13).

8. Regarding claims 7, 23, and 31, Fan discloses selecting said buffer for release of said at least one data unit (col. 17, lines 12-44); and updating a time parameter (timestamp) of said buffer with a predetermined departure parameter (1/M) (col. 16, lines 16-24 and col. 16, line 64-col. 17, line 5).

9. Regarding claims 8, 24, and 32, Fan discloses that said plurality of data units further comprises cells (col. 1, lines 10-13).

10. Regarding claim 9, Fan discloses a system comprising: a memory module for storing a plurality of buffers (col. 15, lines 45-55); and a scheduler module for determining a position on a time scale (compare timestamp to current time) of a buffer of said plurality of buffers, said buffer containing a plurality of data units (col. 6, lines 25-34 and col. 15, line 58-col. 16, line 50) and for modifying a signal prompting selection of said buffer for release of at least one data unit of said plurality of data units based on said position on said time scale (priority increased and rate increased when timestamp is less than current time) (col. 15, line 58-col. 16, line 50 and col. 17, lines 25-40).

11. Regarding claim 10, Fan discloses that said network is an Asynchronous Transfer Mode Network (col. 1, lines 10-13).

12. Regarding claim 15, Fan discloses that said scheduler module further selects said buffer for release of said at least one data unit (col. 17, lines 12-44), and updates a time parameter (timestamp) of said buffer with a predetermined departure parameter (1/M) (col. 16, lines 16-24 and col. 16, line 64-col. 17, line 5).

13. Regarding claim 16, Fan discloses that said plurality of data units further comprises cells (col. 1, lines 10-13).

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2665

15. Claims 3-6, 11-14, 19-22, and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fan et al. (USPN 6,408,005), of record.

16. Regarding claims 3, 11, 19, and 27, Fan discloses comparing a time parameter (timestamp) of said buffer with a current time counter value (col. 15, line 58-col. 16, line 50; col. 17, lines 25-40; and col. 17, line 64-col. 18, line 15); and incrementing a counter ( $f_i$ ) related to said signal if a difference between said current time counter value and said time parameter is greater than zero (col. 17, line 64-col. 18, line 5) where it is implicit that this incrementing is performed to flag an active queue ( $f_i$  becomes 1).

Fan does not expressly disclose incrementing a counter related to said signal if a difference between said current time counter value and said time parameter is greater than twice the value of a predetermined departure parameter. However, Fan also discloses checking for a condition to see if the timestamp falls behind current time by a designated amount, which is greater than the value of a predetermined departure parameter ( $1/M$ ) (col. 16, lines 40-50). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to increment a counter related to said signal if a difference between said current time counter value and said time parameter is greater than the value of a predetermined departure parameter in order to flag the system that the signal needs to be caught up.

Fan does not expressly disclose that the difference is greater than twice the value of a predetermine departure parameter; however, Fan does disclose that the difference is greater than the value of the predetermined departure parameter ( $1/M$ ) (col. 16, lines 40-50). It is generally considered to be within the ordinary skill in the art to adjust, vary, select, or optimize the numerical parameters or values of any system absent a showing of criticality in a particular

recited value. The burden of showing criticality is on applicant. In re Mason, 87 F.2d 370, 32 USPQ 242 (CCPA 1937); Marconi Wireless Telegraph Co. v. U.S., 320 U.S. 1, 57 USPQ 471 (1943); In re Schneider, 148 F.2d 108, 65 USPQ 129 (CCPA 1945); In re Aller, 220 F.2d 454, 105 USPQ 233 (CCPA 1055); In re Saether, 492 F.2d 849, 181 USPQ 36 (CCPA 1974); In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977); In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Since Fan discloses that the difference is greater than an amount, it would have been obvious to one of ordinary skill in the art at the time of the invention to use any amount, including twice the value of the predetermined departure parameter, absent a showing of criticality by Applicant.

17. Regarding claims 4, 12, 20, and 28, Fan discloses comparing a time parameter (timestamp) of said buffer with a current time counter value (col. 15, line 58-col. 16, line 50; col. 17, lines 25-40; and col. 17, line 64-col. 18, line 15); and decrementing a counter (fi) related to said signal if a difference between said current time counter value and said time parameter is lower than zero (col. 17, line 64-col. 18, line 5) where it is implicit that this decrementing is performed to flag an active queue (fi becomes 0).

Fan does not expressly disclose decrementing a counter related to said signal if a difference between said current time counter value and said time parameter is lower than twice the value of a predetermined departure parameter. However, Fan also discloses checking for a condition to see if the timestamp falls behind current time by a designated amount, which is greater than the value of a predetermined departure parameter (1/M) (col. 16, lines 40-50). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to decrement a counter related to said signal if a difference between said current time counter value

and said time parameter is lower than the value of a predetermined departure parameter in order to flag the system that the signal does not need to be caught up.

Fan does not expressly disclose that the difference is greater than twice the value of a predetermine departure parameter; however, Fan does disclose that the difference is greater than the value of the predetermined departure parameter (1/M) (col. 16, lines 40-50). It is generally considered to be within the ordinary skill in the art to adjust, vary, select, or optimize the numerical parameters or values of any system absent a showing of criticality in a particular recited value. The burden of showing criticality is on applicant. In re Mason, 87 F.2d 370, 32 USPQ 242 (CCPA 1937); Marconi Wireless Telegraph Co. v. U.S., 320 U.S. 1, 57 USPQ 471 (1943); In re Schneider, 148 F.2d 108, 65 USPQ 129 (CCPA 1945); In re Aller, 220 F.2d 454, 105 USPQ 233 (CCPA 1055); In re Saether, 492 F.2d 849, 181 USPQ 36 (CCPA 1974); In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977); In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Since Fan discloses that the difference is greater than an amount, it would have been obvious to one of ordinary skill in the art at the time of the invention to use any amount, including twice the value of the predetermined departure parameter, absent a showing of criticality by Applicant.

18. Regarding claims 5, 13, 21, and 29, Fan discloses that said modifying further comprises: asserting said signal if said counter reaches a set threshold value (col. 16, lines 40-50 and col. 17, line 64-col. 18, line 5) where the threshold value is 1.

19. Regarding claims 6, 14, 22, and 30, Fan discloses that said modifying further comprises: deasserting said signal if said counter reaches a reset threshold value (col. 16, lines 40-50 and col. 17, line 64-col. 18, line 5) where the reset threshold value is 0.

*Conclusion*

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Ryman whose telephone number is (571)272-3152. The examiner can normally be reached on Mon.-Fri. 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571)272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel J. Ryman

Examiner

Art Unit 2665

DR



HUY D. VU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600